



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2021–0057; FF09M22000-212-FXMB1231099BPP0]

RIN 1018–BF07

Migratory Bird Hunting; Proposed 2022–23 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Notification of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2022–23 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings, describes the proposed regulatory alternatives for the 2022–23 general duck seasons and preliminary proposals that vary from the 2021–22 hunting season regulations, and requests proposals from Indian Tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands. Migratory bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and Tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: *Comments:* You may comment on the general duck season regulatory alternatives and other preliminary proposals for the 2022–23 season until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. In subsequent *Federal*

Register documents, you will be given an opportunity to submit comments on the proposed frameworks (see **Schedule of Biological Information Availability, Regulations Meetings and Federal Register Publications for the 2022–23 Hunting Season** at the end of this proposed rule for further information). Tribes must submit proposals and related comments on or before December 1, 2021.

Meetings: The SRC will meet on September 28–29, 2021, to consider and develop proposed regulations for the 2022–23 migratory game bird hunting seasons. Meetings on both days will commence at approximately 11 a.m. (Eastern) and are open to the public.

ADDRESSES: *Comments:* You may submit comments on the proposals by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2021–0057.
- U.S. mail: Public Comments Processing, Attn: FWS–HQ–MB–2021–0057; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will not accept emailed or faxed comments. We will post all comments on <http://www.regulations.gov>. This generally means that your entire submission—including any personal identifying information—will be posted on the website. See **Public Comments**, below, for more information.

Meetings: The September 28–29, 2021, SRC meeting will be conducted in person and or by video-teleconference. The meeting is open to the public. Meeting details and opportunities for the public to listen to and observe the meeting will be posted at <https://www.fws.gov/birds> when they become available.

Accommodation requests: The Service is committed to providing access to the SRC meeting for all participants and observers. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to the person listed under

FOR FURTHER INFORMATION CONTACT by close of business on September 1, 2021. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (202) 208–1050.

SUPPLEMENTARY INFORMATION:

Process for Establishing Annual Migratory Game Bird Hunting Regulations

As part of the Department of the Interior’s 2015 retrospective regulatory review, we changed our process for developing migratory game bird hunting regulations with the goal of enabling the State agencies to select and publish their season dates earlier than was allowed under the prior process. We provided a detailed overview of this process in the August 6, 2015, *Federal Register* (80 FR 47388). This proposed rule is the first in a series of proposed and final rules that establish regulations for the 2022–23 migratory bird hunting season.

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when “hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg” of migratory game birds can take place, and to adopt regulations for this purpose (16 U.S.C. 704(a)). These regulations are written after giving due regard to “the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds” (16 U.S.C. 704(a)), and are updated annually. This responsibility has been delegated to the Service as the lead

Federal agency for managing and conserving migratory birds in the United States. However, migratory bird management is a cooperative effort of Federal, State, and Tribal governments.

The Service annually develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season dates, season lengths, shooting hours, bag and possession limits, and areas where migratory game bird hunting may occur. These frameworks are necessary to allow harvest at levels compatible with migratory game bird population status and habitat conditions.

Acknowledging regional differences in hunting conditions, the Service has administratively divided the United States into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State within the Flyway, as well as Provinces in Canada that share migratory bird populations with the Flyway. The Flyway Councils, established through the Association of Fish and Wildlife Agencies, also assist in researching and providing migratory game bird management information for Federal, State, and Provincial governments, as well as private conservation entities and the general public.

The process for adopting migratory game bird hunting regulations (50 CFR part 20) is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

For the regulatory cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size

and trend, geographical distribution, annual breeding effort, condition of breeding and wintering habitat, number of hunters, and anticipated harvest. After frameworks are established, States may select migratory game bird hunting seasons within these frameworks. States may always be more conservative in their selections than the Federal frameworks, but never more liberal.

Service Migratory Bird Regulations Committee Meetings

The SRC conducted an open meeting on April 6, 2021, to discuss preliminary issues for the 2022–23 regulations, and will conduct another meeting on September 28–29, 2021, to review information on the current status of migratory game birds and develop 2022–23 migratory game bird regulations recommendations for these species. In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed. See **DATES** and **ADDRESSES** for information about these meetings.

Notice of Intent To Establish Open Seasons

This document announces our intent to establish open hunting seasons for certain designated groups or species of migratory game birds for 2022–23 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20. For the 2022–23 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under **Proposed 2022–23 Migratory Game Bird Hunting Regulations (Preliminary)** in this document. We annually publish definitions of flyways and management units, and a description of the data used in and the factors affecting the regulatory process in proposed and final rules later in the regulations development process (see February 22, 2021, *Federal Register*, 86 FR 10622, for the latest definitions and descriptions).

Regulatory Schedule for 2022–23

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the *Federal Register* as population, habitat, harvest, and other information become available. Major steps in the 2022–23 regulatory cycle relating to open public meetings and *Federal Register* notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of *Federal Register* documents are target dates. All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks

A. General Harvest Strategy

B. Regulatory Alternatives

C. Zones and Split Seasons

D. Special Seasons/Species Management

i. Early Teal Seasons

ii. Early Teal/Wood Duck Seasons

iii. Black Ducks

iv. Canvasbacks

v. Pintails

vi. Scaup

vii. Mottled Ducks

viii. Wood Ducks

ix. Youth and Veterans–Active Military Personnel Hunting Days

x. Mallard Management Units

xi. Other

2. Sea Ducks
3. Mergansers
4. Canada Geese
 - A. Special Early Seasons
 - B. Regular Seasons
 - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Doves
17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

This and subsequent documents will refer only to numbered items requiring attention.

We will omit those items not requiring attention, and remaining numbered items may be

discontinuous and appear incomplete.

The proposed regulatory alternatives for the 2022–23 duck hunting seasons are contained at the end of this document. We plan to publish final regulatory alternatives for duck seasons about fall 2021, proposed season frameworks about winter 2021, and final season frameworks near the end of February 2022.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2022–23 general duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2021–22 regulations and issues requiring early discussion, action, or the attention of the States or Tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2022–23 season. We seek additional information and comments on this proposed rule.

Consolidation of Rulemaking Documents

For administrative purposes, this document consolidates the notice of our intent to establish open migratory game bird hunting seasons and the request for Tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on Tribal guidelines and proposals, Tribes should contact:

Gregory Fleming, U.S. Fish and Wildlife Service Headquarters, Division of Migratory Bird Management, 5275 Leesburg Pike, Falls Church, VA 22041; telephone: 703-358-2391; email: gregory_fleming@fws.gov.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, *Federal Register* (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to Tribal requests for our recognition of their reserved hunting rights, and for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both Tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by Tribal members only, outside of usual Federal frameworks for season dates, season length, and daily bag and possession limits; and

(3) Off-reservation hunting by Tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, Tribal regulations established under the guidelines must be consistent with the annual March 11 to August 31 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds, as amended by the Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention Between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States. The guidelines are applicable to those Tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where Tribes have full wildlife-management authority over such hunting, or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on

Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with Tribal and State officials in the affected States where Tribes may wish to establish special hunting regulations for Tribal members on ceded lands. It is incumbent upon the Tribe and/or the State to request consultation as a result of the proposal being published in the *Federal Register*. We will not presume to make a determination, without being advised by either a Tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of Tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We are supportive of this harvest provided it does not take place during the closed season required by the Convention and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with Tribes for migratory game bird hunting by Tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with Tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by Tribal members. These guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a Tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2022–23 migratory game bird hunting season should submit a proposal that includes: (1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations; (2) harvest anticipated under the proposed regulations; and (3) Tribal capabilities to enforce migratory game bird hunting regulations. For those situations where limited capabilities to enforce regulations could result in harvest levels that significantly impact the migratory game bird resource, we also request information on the methods employed to monitor harvest and any potential measures to limit harvest levels.

A Tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a Tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag limit, possession limit, and season length for migratory game birds that Federal regulations are likely to permit for the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of Tribal proposals for public review in later *Federal Register* documents. Because of the time required for review by us and the public, Tribes that desire special migratory game bird hunting regulations for the 2022–23 hunting season should submit their proposals no later than December 1, 2021. Tribes should direct inquiries regarding the guidelines and proposals to the person listed above under the caption **Consolidation of Rulemaking Documents**. Tribes that request special migratory game bird hunting regulations for Tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments

The Department of the Interior’s policy is, whenever practicable, to afford the public an

opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. Such comments, and any additional information we receive, may lead to final regulations that differ from these proposed rules.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. Finally, we will not consider mailed comments that are not postmarked by the date specified in **DATES**. We will post all comments in their entirety—including your personal identifying information—on <http://www.regulations.gov>. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in any final rules.

National Environmental Policy Act (NEPA) Consideration

The programmatic document, “Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),” filed with the Environmental Protection Agency (EPA) on May 24, 2013,

addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the *Federal Register* on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being “Duck Hunting Regulations for 2021–22,” with its corresponding March 2021 finding of no significant impact. In addition, an August 1985 environmental assessment entitled “Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands” is available from the person listed above under the caption **Consolidation of Rulemaking Documents**.

Endangered Species Act Consideration

Before issuance of the 2022–23 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter “the Act”), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or adversely modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in future supplemental proposed rulemaking documents.

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of \$100 million or more on the economy.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs

agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2022–23 migratory bird hunting season. This analysis was based on data from the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey), the most recent year for which data are available (see discussion under **Regulatory Flexibility Act**, below). This analysis estimated consumer surplus for three alternatives for duck hunting regulations. As defined by the U.S. Office of Management and Budget in Circular A-4, consumers' surplus is the difference between what a consumer pays for a unit of a good or service and the maximum amount the consumer would be willing to pay for that unit. The duck hunting regulatory alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2021–22 season, (2) issue moderate regulations allowing more days than those in Alternative 1, and (3) issue liberal regulations similar to the regulations in the 2021–22 season. For the 2021–22 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of \$270–\$358 million with a mid-point estimate of \$314 million. We also chose Alternative 3 for the 2009–10 through 2020–21 seasons. The 2022–23 analysis is part of the record for this rule and is available at <http://www.regulations.gov> at Docket No. FWS–HQ–MB–2021–0057.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An Initial Regulatory Flexibility Analysis was prepared to analyze the economic impacts of the

annual hunting regulations on small business entities. This analysis is updated annually. The primary source of information about hunter expenditures for migratory game bird hunting is the National Survey, which is generally conducted at 5-year intervals. The 2021 analysis is based on the 2016 National Survey and the U.S. Department of Commerce's County Business Patterns, from which it is estimated that migratory bird hunters would spend approximately \$2.2 billion at small businesses in 2022. Copies of the analysis are available upon request from the person listed above under the caption **Consolidation of Rulemaking Documents** or from <http://www.regulations.gov> at Docket No. FWS–HQ–MB–2021–0057.

Clarity of the Rule

We are required by E.O. 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on

the economy of \$100 million or more. However, because this rule would establish hunting seasons, which are time sensitive, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*). OMB has previously approved the information collection requirements associated with migratory bird surveys and the procedures for establishing annual migratory bird hunting seasons under the following OMB control numbers:

- 1018–0019, “North American Woodcock Singing Ground Survey” (expires 02/29/2024).
- 1018–0023, “Migratory Bird Surveys, 50 CFR 20.20” (expires 04/30/2023). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.
- 1018–0171, “Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR Part 20” (expires 02/29/2024).

You may view the information collection request(s) at

<http://www.reginfo.gov/public/do/PRAMain>. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking would not impose a cost of \$100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a “significant regulatory action” under the Unfunded Mandates Reform

Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule would allow hunters to exercise otherwise unavailable privileges and, therefore, would reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian Tribes and have determined that there are *de minimis* effects on Indian trust resources. However, in this

proposed rule, we solicit proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2022–23 migratory bird hunting season. The resulting proposals are contained in a separate proposed rule published in spring and final rule published in summer 2022. Through this process to establish annual hunting regulations, we regularly coordinate with Tribes that are affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive in its regulations than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority

The rules that eventually will be promulgated for the 2022–23 hunting season are authorized under 16 U.S.C. 703–711, 712, and 742 a–j.

Shannon A. Estenoz,
Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2022–23 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. Due to the coronavirus pandemic, several annual monitoring activities that provide information used in developing regulatory recommendations have been temporarily cancelled or otherwise impacted. We intend to follow existing harvest management strategies to the extent possible, although some modifications will be necessary due to the absence of status information for 2021 for many species and populations of game birds. Service staff are in the process of developing adjustments to the strategies to accommodate this issue. Given the recent cancellations, we cannot provide specific changes at this time, but will detail the changes in subsequent rulemaking and notices published in the *Federal Register*. Issues requiring early discussion, action, or the attention of the States or Tribes are described below.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those categories containing substantial recommendations are discussed below.

A. General Harvest Strategy

We will continue to use adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2022–23 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use an AHM protocol (decision framework) to evaluate four regulatory alternatives, each with a different expected harvest level, and choose the optimal regulation for duck hunting based on the status and demographics of mallards for the

Mississippi, Central, and Pacific Flyways, and based on the status and demographics of a suite of four species (eastern waterfowl) in the Atlantic Flyway. We have specific AHM protocols that guide appropriate bag limits and season lengths for species of special concern, including black ducks, scaup, and pintails, within the general duck season. These protocols use the same outside season dates and lengths as those regulatory alternatives for the 2022–23 general duck seasons.

For the 2022–23 hunting season, we will continue to use independent optimizations to determine the appropriate regulatory alternative for mallard stocks in the Mississippi, Central, and Pacific Flyways and for eastern waterfowl in the Atlantic Flyway. This means that we will develop regulations for mid-continent mallards, western mallards, and eastern waterfowl independently based on the breeding stock that contributes primarily to each Flyway. We detailed implementation of AHM protocols for mid-continent and western mallards in the July 24, 2008, *Federal Register* (73 FR 43290), and for eastern waterfowl in the September 21, 2018, *Federal Register* (83 FR 47868).

Due to the coronavirus pandemic and associated travel restrictions and human health concerns in the United States and Canada, certain migratory bird monitoring surveys have been cancelled in 2021. This includes the Waterfowl Breeding Population and Habitat Survey, which provides status information for many species of waterfowl, including those used in our AHM protocols. Consequently, in some cases, we will need to deviate from our AHM protocols and other decision processes to address missing data from 2021. We will adjust our AHM protocols and decision tools for general duck seasons and species of concern, including pintails, scaup, black ducks, canvasbacks, and wood ducks only to the extent necessary to inform the regulatory decisions for the 2022–23 season. For existing AHM protocols, we propose to use the strategy for each flyway, but use the long-term data and models to predict 2021 spring abundances of ducks and habitat conditions in place of the spring 2021 data, which will not be available. The predicted 2021 breeding populations would be used in combination with the most current policy matrix (e.g., breeding population and pond counts) to develop recommendations for the 2022–23

hunting season. For other decision support tools such as those used for canvasback and blue-winged teal, similar to AHM protocols, we will develop statistical predictions of the 2021 spring abundance of these species to inform harvest regulation decisions for the 2022–23 hunting season. We will work cooperatively with the Flyway Councils as we develop a plan for addressing missing data in regulatory decision-making for the 2022–23 hunting season, and will post specific details about deviations from our AHM protocols and decision support tools on our website at <https://www.fws.gov/birds> when they become available.

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. In 2002, based upon recommendations from the Flyway Councils, we extended framework dates in the “moderate” and “liberal” regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and by changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. In 2018, we adopted a closing duck framework date of January 31 for the “moderate” and “liberal” alternatives in the Atlantic Flyway as part of the Atlantic Flyway’s eastern waterfowl AHM protocol (83 FR 47868; September 21, 2018). We subsequently extended the framework closing date to January 31 across all four Flyways for the 2019–20 hunting season (84 FR 16152; April 17, 2019).

More recently, the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Pub. L. 116–9, Dingell Act) amended the Migratory Bird Treaty Act to establish that the closing framework date for duck seasons will be January 31, unless a flyway chooses an earlier closing date. Thus, in 2019, as directed by the Dingell Act, we adjusted the framework closing date under each regulatory alternative for all four Flyways to January 31 (84 FR 42996; August 19, 2019). In 2020, we agreed to move the opening framework date to one week earlier in the restrictive regulatory alternative for the Mississippi and Central Flyways beginning with the 2021–22 season

based on their recommendations (85 FR 15870; March 19, 2020).

For the 2022–23 general duck season, we propose to utilize the same regulatory alternatives that are in effect for the 2021–22 season (see table at the end of this proposed rule for specifics of the regulatory alternatives). Alternatives are specified for each Flyway and are designated as “RES” for the restrictive, “MOD” for the moderate, and “LIB” for the liberal alternative. We plan to finalize AHM regulatory alternatives for the 2022–23 season in the supplemental proposed rule, which we plan to publish by fall of 2021 (see **Schedule of Biological Information Availability, Regulations Meetings and Federal Register Publications for the 2022–23 Hunting Season** at the end of this proposed rule for further information). We will propose a specific regulatory alternative in or around December 2021 for each of the Flyways to use for their 2022–23 seasons after status information and results from analytical adjustments to strategies become available in about late August 2021.

D. Special Seasons/Species Management

xi. Other

For the Atlantic Flyway, under the eastern waterfowl AHM protocol for the Atlantic Flyway, the mallard bag limit is not prescribed by the regulatory alternative but is instead based on a separate assessment of the harvest potential of eastern mallards. We will propose a specific mallard bag limit for the Atlantic Flyway in or around December 2021.

Also, although not part of any current harvest management strategy, we propose to allow South Dakota and Nebraska to continue to conduct a pilot study during the 2022–23 duck season of a two-tier regulation system as described in the March 19, 2020, proposed rule (85 FR 15870). This would be the second year of a planned 4-year pilot study. The intent of the two-tier license study is to evaluate whether regulations that relax hunters’ requirement to identify duck species can improve waterfowl hunter recruitment and retention. Declines in waterfowl hunter numbers have been of concern to the Service and the Flyway Councils, prompting the development of

recruitment, retention, and reactivation (R3) efforts in the conservation community. The study would allow each person to obtain one of two license types during the duck season. The first license type would allow a daily bag limit as specified in the current duck regulations (six ducks), along with attendant species and sex restrictions. The second license type would allow a daily bag limit of only three ducks, but they could be of any species or sex. Additional years of study would be contingent on whether results from the first duck season (2021–22) warrant additional investigation. Memoranda of agreements between the Service and the two States specify the purpose of the study and the roles and responsibilities of each party while conducting the pilot study.

2. Sea Ducks

During the April 6, 2021, SRC meeting, the Atlantic Flyway Council recommended three changes to the special sea duck season in the Atlantic Flyway: (1) Elimination of the special sea duck season; (2) reduction of the sea duck daily bag limit within the regular duck season to 4 ducks in the aggregate of which no more than 3 may be scoters, long-tailed ducks, or eiders, and no more than 1 may be a hen eider; and (3) retention of the exception that allows shooting of crippled waterfowl from a boat under power in the currently defined special sea duck areas in the Atlantic Flyway. The Atlantic Flyway Council and SRC will again discuss and consider proposing sea duck harvest regulations during the September 28–29, 2021, SRC meeting. Any resultant recommended regulations will be included in the proposed season frameworks published in or around December 2021 (see **Schedule of Biological Information Availability, Regulations Meetings and Federal Register Publications for the 2022–23 Hunting Season** at the end of this proposed rule). We are announcing these possible changes to sea duck hunting regulations in the Atlantic Flyway starting with the 2022–23 season now to allow the greatest opportunity for public review and comment.

Special season regulations are used to provide additional hunting opportunity for species

considered to be under-utilized or to address nuisance problems with overabundant species. We have authorized a special sea duck season (including eiders, long-tailed duck, and scoters) in the Atlantic Flyway since 1938. By 1973, 13 of the 17 Atlantic Flyway States allowed special seasons consisting of 107 days with a daily bag limit of 7 sea ducks. We reduced the scoter daily bag limit to 4 ducks in 1993. In 2016, we reduced the season length from 107 to 60 days and the daily bag limit from 6 to 5 sea ducks of which no more than 4 may be eiders, long-tailed ducks, or scoters. The 2016 restrictions were anticipated to reduce average annual sea duck harvest by approximately 25 percent compared to average annual harvest during the period 2011–2015. See the March 28, 2016, *Federal Register* (81 FR 17305) for a discussion of the Sea Duck Harvest Potential Assessment completed at that time.

The changes to the Atlantic Flyway sea duck regulations did not achieve the target reduction in total sea duck harvest. Therefore, we are considering the changes recommended by the Atlantic Flyway Council due to the continued concern regarding the status and trends of sea duck populations in the Atlantic Flyway, and our desire to reduce sea duck harvest in the Atlantic Flyway below the average annual harvest observed during 2011–2015. Regarding the Council's recommendation to retain the regulation exception that allows shooting of crippled waterfowl from a boat under power in the currently defined special sea duck area, we provide that the purpose of this regulation is to protect human safety and minimize duck crippling loss associated with hunting ducks at sea in the Atlantic Flyway regardless of the special sea duck season.

PROPOSED REGULATORY ALTERNATIVES FOR THE 2022–23 GENERAL DUCK SEASONS

| | ATLANTIC FLYWAY | | | MISSISSIPPI FLYWAY | | | CENTRAL FLYWAY (a) | | | PACIFIC FLYWAY (b)(c) | | |
|--|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|
| | RES | MOD | LIB | RES | MOD | LIB | RES | MOD | LIB | RES | MOD | LIB |
| Beginning Shooting Time | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise |
| Ending Shooting Time | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset |
| Opening Date | Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 |
| Closing Date | Jan. 31 | Jan. 31 | Jan. 31 | Jan. 31 | Jan. 31 | Jan. 31 | Jan. 31 | Jan. 31 | Jan. 31 | Jan. 31 | Jan. 31 | Jan. 31 |
| Season Length (in days) | 30 | 45 | 60 | 30 | 45 | 60 | 39 | 60 | 74 | 60 | 86 | 107 |
| Daily Bag | 3 | 6 | 6 | 3 | 6 | 6 | 3 | 6 | 6 | 4 | 7 | 7 |
| Species/Sex Limits within the Overall Daily Bag Limit | | | | | | | | | | | | |
| Mallard (Total/Female) | (d) | (d) | (d) | 2/1 | 4/1 | 4/2 | 3/1 | 5/1 | 5/2 | 3/1 | 5/2 | 7/2 |

- (a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.
- (b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.
- (c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit (depending on the area) would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1–Jan. 26.
- (d) Under the proposed multi-stock AHM protocol for the Atlantic Flyway, the mallard bag limit would not be prescribed by the regulatory alternative.

SCHEDULE OF BIOLOGICAL INFORMATION AVAILABILITY, REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS FOR THE 2022–23 HUNTING SEASON

SURVEY & ASSESSMENT SCHEDULE

March–June, 2021
SPRING POPULATION SURVEYS

August 15, 2021
WATERFOWL STATUS REPORT

August 20, 2021
*AHM REPORT w/OPTIMAL ALTERNATIVES,
WEBLESS and CRANE STATUS
INFORMATION, DOVE and WOODCOCK
REGULATORY ALTERNATIVES, and
HUNTER ACTIVITY and HARVEST REPORT*

December 15, 2021–January 31, 2022
*FALL and WINTER SURVEY
INFORMATION for CRANES
and WATERFOWL*

MEETING SCHEDULE

April 6, 2021 - Video-teleconference
SRC Meeting

August 15 - September 15, 2021
Flyway Tech And Council Meetings

September 28-29, 2021 - Virtual
SRC Regulatory Meeting

March 2022 (at North American Conference)
Flyway Council Mtgs

September 1, 2022 and later
ALL HUNTING SEASONS

FEDERAL REGISTER SCHEDULE

July 10, 2021
***PROPOSED RULEMAKING (PRELIMINARY)
WITH STATUS INFORMATION
and ISSUES***

September 15, 2021
SUPPLEMENTAL PROPOSALS

December 10, 2021
***PROPOSED SEASON FRAMEWORKS
(30 Day Comment Period)***

February 25, 2022
FINAL SEASON FRAMEWORKS

June 1, 2022
***ALL HUNTING SEASONS SELECTIONS
(Season Selections Due To USFWS April 30)***



